October18, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: ***In the Matter of Protecting Privacy of Customers of Broadband and Other Telecommunications Services, WC Docket No. 16-106***

Dear Ms. Dortch:

As the Commission works to finalize its new rules governing ISP use of customer data, MediaFreedom urges the FCC to take pause and reconsider its latest plan. There are better, more flexible options to balance the interests of consumer privacy and competitive innovation than what the Commission has currently proposed. One such option favored by MediaFreedom would be for the FCC to more closely accord its privacy regime with that of the FTC. This model has worked for consumers and the Internet ecosystem. The FCC would do well to adopt and/or adapt to it.

The Chairman claims that his newly proposed Section 222 framework is "in harmony" with a more FTC-like approach toward addressing Internet privacy matters. But the Chairman's new restrictions for "sensitive information," which will require restrictive opt-in approvals for ISPs (only) to use customer data such as web history and app usage, bear little resemblance to the FTC's process. Web history and app usage (among other information) represent the lifeblood of the Internet's data economy. Competing in this space is all important. The FTC's framework would allow use of web history and app usage by ISPs. But the FCC's proposed opt-in rule effectively bans ISPs from using that data, thus foreclosing a viable marketplace option. Instead of opening competition, which is generally thought of as pro-consumer, the Chairman's proposal actually limits it to the benefit of only one powerful constituency – billion-dollar, Silicon Valley edge companies, which will not be covered by the Commission's privacy regime.

What is even more perplexing is that when viewed in the context of the FCC's Open Internet Order / Net Neutrality rules, one is hard-pressed to understand how FCC prohibitions on ISP curation of their communications networks – i.e., prior-restraint proscriptions, bans on free association, and outright denial of editorial discretion – foster a sustainable growth environment for ISPs and the Internet as a whole. Quite simply, the FCC's Net Neutrality rules have all but neutered these freedoms contrary to the Constitution and economics. By essentially stripping ISPs of their way to make a reasonable profit from their investments, the FCC is undermining the very "virtuous circle" policy it purports to advance through its Section 706 / Net Neutrality / Title II / Internet Privacy rules.

While other challenges abound in the proposed rules, we would like to reiterate our central recommendation made in our initial 16-106 comments and replies that the Commission should follow a more purely FTC-like case-by-case, opt-out framework for balancing privacy and marketplace interests. Though Congress could have directed the FCC to create a rulemaking in Section 222 to effectuate its text, a specific rule is not mandated by the Telecommunications Act

of 1996. The short of this is that the FCC has a good amount of flexibility in tailoring its privacy protection process. Consequently, it strains credulity to accept the hyper-regulatory result presently proposed by the Commission to address the "problem" of ISP use of customer data. Other less restrictive, more competition-friendly avenues clearly exist. They must be taken.

To this end, MediaFreedom urges the FCC to reconsider its current proposal, bringing it truly in harmony with the FTC approach and marketplace expectations. This model has worked for decades, protecting consumers while also allowing competition and growth in the Internet ecosystem to flower.

Respectfully submitted,

Mike Wendy
President – MediaFreedom.org
Alexandria, VA